

REMARKS

As a preliminary matter, a supplemental information disclosure statement is filed herewith. Acknowledgement and consideration is requested.

Claim 8 was objected to for an informality. This objection is rendered moot by the cancellation of claim 8.

Claims 1, 2, 4, 6, 7, 8, 9, and 36-41 are provisionally rejected under nonstatutory obviousness-type double patenting over application no. 10/503,217. Claims 1, 2, 4, 6, 7, 8 and 9 have been canceled, rendering the rejection moot. Claims 36-41 have been amended to depend eventually from claim 18 (which was also amended). The amendments to these claims also render the double patenting rejection moot.

Claims 1-41 stand rejected under 102(a) based upon Sailor WO03067231. Claims 1-17 have been canceled. Claim 18 has been amended, and the remaining claims have been amended to depend directly or eventually from claim 18. The rejection is respectfully traversed with respect to the amended claims.

The amendment to claim 18 incorporates claim 19 and additional features that specifically define the etching current waveform used in the method. The office action has addressed the previously broader features of claim 19 by referencing "Fig 3A and page 4, lines 6-8; and Fig 4, step 20; Fig 2A; Fig 28 and page 8, lines 10-19." These excerpts, as well as Sailor as a whole, fail to disclose the features of the amended claims. Fig. 3A only discloses "etching a semiconductor or insulator with a periodic variance of etching conditions, such that the refractive index in the material varies in a sinusoidal (or apodised sinusoidal) function". P8, L12-14. Equations 1-4 in the application were determined by the inventors and enable grey scale encoding of micron sized particles that was not disclosed or suggested by Sailor (which represents prior work of some of the present inventors). As described on page 7 of the instant application, the grey scale encoding of the invention enables " L Neodes, where N is the number of spectral lines and L is the number of grey levels possible in each spectral line." The large number of predetermined codes offered by the ability to grey scale encode provided by the invention provides advantages in example areas of "high-throughput screening in the fields of drug discovery, genetics screening, biomedical research, and biological and chemical sensing.", as discussed in the background of the present invention. While Sailor recognized general coding, there is no disclosure or suggestion of the particular method as in amended claim 18 is neither disclosed nor suggested. The particular method and equations for generating grey scale code have been demonstrated to provide "reproducibility in the spectral position and grey level (spectral height)". Reliable coding with many more codes than provided in Sailor is provided by the invention as in the amended claims.

The remaining pending claims depend directly or eventually from claim 18. They define further aspects of the method of formation, or in the case of claims 36-42 a particle or film formed according to a preferred claimed method. New claim 42 is a film formed from the method of claim 18.

For all of the above reasons, Applicant believes that that present case is condition for allowance, and notice of the same is respectfully requested. Should the Examiner believe that any outstanding issues exist or that a teleconference would expedite prosecution, then the Examiner is invited to contact the undersigned attorney at the below-listed number.

Respectfully submitted,
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